IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

Date of Decision: 15.11.2006

Inder Bhan (L) Bharatri Educational Society (Regd.),Panipat

..Petitioner

Versus

State of Haryana and others ..Respondents

CORAM: **HON'BLE MR.JUSTICE H.S.BHALLA**

Present:- Mr. R.C.Dogra, Senior Advocate
with Mr. C.L.Pawar, Advocate,
for the petitioner.

Mr. Ajay Gulati, Assistant Advocate
General, Haryana for the respondents.

H.S.BHALLA, J.

Petitioner-Society has knocked the door of this Court by filing the petition under Article 226 of the Constitution of India praying for issuance of a writ in the nature of certiorari quashing letters (Annexures P-14 and P-15) vide which petitioner-Society was required to deposit a sum of Rs.1,62,870/- by bank draft in favour of Director, Town & Country Planning, Haryana at the rate of Rs.10/- Per Sq.Meters as scrutiny fee for the purpose of raising additional construction of the building on the land purchased for expansion of the school. The petitioner-Society has further prayed for issuance of a writ in the nature of mandamus declaring amendment of Rule 26-A in the Rules of 1965 under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965 (hereinafter referred to as "Rules of 1965") as unconstitutional, illegal, arbitrary, without jurisdiction and beyond the powers of the State Government.

The other facts required to be noticed for the disposal of this

petition are that the petitioner-society purchased 4 acres and 3 Marlas of land in village Ugra Kheri on the behest of the team of the Central Board of Secondary Education, which inspected the building of the school and advised its management for extending the premises of the school by at least 2 acres, so that a senior wing of the school is constructed thereon. The petitioner-society, vide its letter dated 25.3.1996 (Annexure P-2) sought permission from the Deputy Commissioner-cum-Registrar to register the sale deed. Accordingly, vide letter dated 4.4.1996 (Annexure P-4), permission was granted for getting the sale deed registered by the Deputy Commissioner-cum-Registrar. It has been further averred in the petition that the petitioner-Society applied for grant of permission for the change of land use before respondent No.2 vide letter dated 19.9.1997 as was done earlier in the cases of DAV School, Fatehabad, Shri Krishan Education Society, Karnal and Maharishi Vidya Mandir, Hisar, a copy of which is annexed with the writ petition as Annexure P-5. The application vide which permission was sought for the change of land use was refused by Director, Town and Country Planning-respondent No.2 vide letter dated 11.12.1997 mentioning therein certain objections, a copy of which is annexed with the writ petition as Annexure P-6. Vide letter dated 3.7.1998, the petitioner-Society brought some points to the notice of respondent No.2, which were met and genuineness certificate of the petitioner-society was issued by Deputy Commissioner and was sent to respondent No.2, a copy of which is annexed with the petition as Annexure P-8. The petitioner-society also sent a letter dated 1.8.1998 (Annexure P-9) to the Chief Minister of Haryana regarding change of land use. The petitioner-society sent as many as four reminder to respondent No.2 for grant of permission with regard to change of land use, but to no effect and vide letter dated 3.12.1999 (Annexure P-14) issued by respondent No.2, scrutiny fee was asked for. Vide letter dated 2.3.2000 (Annexure P-15), respondent No.2

informed the petitioner-Society that in case scrutiny fee is not deposited within 15 days, the application will be treated as having been filed. Aggrieved against the impugned orders aforesaid, the petitioner-Society, finding no alternative, filed the present petition.

The petition was contested by the respondents and through their written statement it was pointed out that the Central Bureau of Secondary Education never directed the petitioner-Society to extend the premises of school by at least 2 acres for the construction of buildings for Senior Wing of the School within one and half year. Letter (Annexure P-2) annexed with the petition is just an approval for provisional affiliation (lst class to Xth class) of the school with the Central Board of Secondary Education. This approval/affiliation was subject to certain conditions inter alia one of the conditions was that the school will construct its building at new site and shift the entire school thereon within one and half year. In such a situation, it was pointed out by the respondents that it was factually incorrect that the Central Board of Secondary Education directed to extend the premises of the school. Therefore, there was no justification for constructing the school building after 31.3.1999, if not constructed prior to it. On various grounds mentioned in para No.4 of the written statement submitted by the respondents, permission for change of land use was not granted to the petitioner-society. It has been further maintained in the written statement that on the representation dated 14.7.1998 submitted by the petitioner-Society in the office of Director, Town and Country Planning, Haryana, regarding permission for change of land use, the matter was examined by respondent No.2 and petitioner was also asked to appear for personal hearing along with certain documents on 2.12.1998 and certain deficiencies were pointed out, which, the representative of the petitioner-society agreed to remove the same immediately. However, the petitioner-Society, in response to the personal hearing and letter dated 16.12.1998,

raised objections vide letter dated 18.2.1999 mentioning therein that as per norms for affiliation for a school laid down by the Central Board of Secondary Education, only 2 acres of land is required and therefore, the objections/deficiencies pointed out by the department in this regard are not justified. It has been further maintained in the written statement that District Planner, Panipat, respondent No.3, vide letter dated 4.11.1999 informed the petitioner-society has constructed two rooms and a tubewell room at the site for which a show cause notice was issued to them. In the meantime, Rules of 1965 were amended and substituted the words “an application in writing to the Director” with the words “an application in writing along with scrutiny fee at the rate of Rs. 10 per swuare meter in the form of bank draft to the Director.” and as per amended rule 26-A of the Rules, the management of the school was required to deposit scrutiny fee at the rate of Rs.10/- per Sq. Meter along with application form. Since the application of the petitioner-society was still under scrutiny, therefore, the petitioner-Society, vide letter dated 8.12.1999 (Annexure R-6), was asked to deposit scrutiny fee. The petitioner-Society did not respond to the aforementioned letter and thereafter, a reminder dated 2.3.2000 was issued by the respondents to the petitioner-society, a copy of which is annexed with the petition as Annexure R-7. The petitioner-society did not comply with the statutory requirement of the Act of 1963 and chose to file the present petition challenging the demand of scrutiny fee. Finally, it was prayed for dismissal of the petition.

I have heard the learned counsel for the parties on either side and have also gone through the record of the case.

The primary argument raised by the learned counsel appearing for the petitioner-society is that the petitioner-Society moved an application for change of land use before Director, Town and Country Planning, Haryana-respondent No.2 on 19.9.1997 much prior to the

enforcement of the amendment in rule No. 26-A of the Rules 1965, which was notified on 1.10.1999 (Annexure P-16) according to which, scrutiny fee at the rate of Rs.10/- Per Sq.Meter is required to be deposited by way of Bank draft along with the application form in favour of Director, Town and Country Planning, Chandigarh. Learned counsel has further pointed out that various objections were raised by respondent No.2, but they all were removed, discussions were held and the process of scrutiny had been completed and only permission was required to be issued. Learned counsel appearing for the petitioner has further contended that the amendment in rules cannot be made applicable with retrospective effect, rather the same may be made effective for new applications and this cannot be made applicable on pending applications for change of land use. In the light of the contentions raised by the learned counsel appearing for the petitioner-Society and the averments made in the writ petition, the case of the petitioner-Society has to be examined minutely.

It is crystal clear from the record that the entire case of the petitioner-society revolves around notification dated 1.10.1999 (Annexure P-16) and the letters dated 3.12.1999 and 2.3.2000 (Annexures P-14 and P-15) issued by Director, Town and Country Planning, Chandigarh, whereby petitioner-Society was asked to deposit scrutiny fee of Rs.1,62,870/- by way of bank draft in favour of the Director at the rate of Rs.10/- Sq.Meter Record further spells out that the application was moved by the petitioner-society regarding permission for change of land use with respondent No.2 on 19.9.1997, which is still pending consideration with them. If at all, it be presumed that the application submitted by the petitioner could not be decided by respondent No.2 since the objections raised by them were not removed by the petitioner-Society, though, according to the petitioner-Society, were all removed, and in the meantime, amendment in rule 26-A was enforced with effect from 1.10.1999, even

then the case of the petitioner-society does not fall within the ambit of the amended rules inasmuch as, the application by the petitioner-Society was filed much earlier to the coming into force of amendment in rule 26-A of the 1965 Rules, which cannot be made applicable restrospectively and the petitioner-society can not be forced to deposit scrutiny fee for deciding the application seeking permission for change of land use. To repel this contention of the learned counsel appearing for the petitioner-society, no effective argument was advanced by the learned counsel appearing for the State, which could show that the the factual position put up by the petitioner-society is not in accordance with the averments contained in the writ petition. Even in the written statement submitted by the respondents, the stand taken by the petitioner-society with regard to the date of filing of application form and the date of amenment of the rules has not been controverted in any manner. During the course of arguments, learned counsel appearing for the State could not point out any discrepancy with regard to the date of the filing of the application submitted by the petitioner-society with Director, Country and Town Planning, Chandigarh, respondent No.2, and the date of notification of the amendment in rule 26-A of the 1965 Rules vide which scrutiny fee along with the application form by way of bank draft in favour of the Director, town and Country Planning at the rate of Rs. 10/- Per Sq.Meter was imposed, meaning thereby that no flaw could be pointed out by the learned counsel appearing for the respondents in the case of the petitioner-Society as projected by it. It is conceded by the learned counsel for the respondents that before amendment of the Rules of 1965, at the time of filing of the application, no scrutiny fee was chargeable and only an application was required to be submitted. Before submitting an application to the Director, Country and Planning Haryana-respondent No.2, the Deputy Commissioner-cum-Registrar, vide letter dated 4.4.1996 (Annexure P-4), had granted permission to the petitioner-

society for getting the sale deed registered of the land measuring 32 Kanals 3 Marlas, a copy of which was sent to the Sub Registrar, Panipat for its compliance.

This Court is of the view that it is high time for the public authorities to adopt a practice of not relying upon technical pleas for the purposes of defeating legitimate claims of the citizens. Of course, if public authority or government takes up a technical plea, the Court has to decide it and if the plea is well founded, it is to be upheld by the Court, but the government should not take up such technical pleas in order to defeat the rights of the citizens. In the instant case, the claim of the petitioner-Society was a just claim, particularly when it had filed its application prior to the issuance of a notification and then again permission was not granted to the petitioner-society by raising certain objections, which, according to the case of the petitioner-Society, were removed and the Director, respondent No.2, was only required to pass a formal order after removing all the objections, but even then, the formal permission was not granted for the reasons best known to the Director till October, 1999 and on the issuance of the notification dated 1.10.1999, the petitioner-society was called upon to pay scrutiny fee at the rate of Rs.10/- per Sq.Meter in the form of bank draft, which was not paid by it. In view of all this, it is, ip so facto, clear that the amended rule 26-A of the Rules 1965 cannot be made applicable with retrospective effect and as such, respondent No.2, in fact, exceeded his jurisdiction by directing the petitioner-society to deposit scrutiny fee, which was required to be deposited in case of application to be submitted after coming into force of the amendment.

For the reasons stated above, writ petition is partly allowed. Letters (Annexures P-14 and P-15) issued by Director, Country and Town Planning, Chandigarh-respondent No.2 are quashed only in regard to depositing scrutiny fee by the petitioner-society along with the application

form, inasmuch as amendment in rule 26-A of the Rules, 1965 does not apply in case of the petitioner-society. Respondents are directed to issue necessary permission to the petitioner-society regarding change of land use without depositing the scrutiny fee, within a period of two months from the date a certified copy of this order is received by them.

15.11.2006 (H.S.BHALLA)
VK JUDGE